

STATE OF INDIANA)
COUNTY OF MARION) SS:

BEFORE THE ENVIRONMENTAL MANAGEMENT
BOARD OF THE STATE OF INDIANA

RECEIVED

IN THE MATTER OF
GARY DEVELOPMENT, INC.,

Petitioner,

v.

THE ENVIRONMENTAL
MANAGEMENT BOARD OF
THE STATE OF INDIANA,

Respondent.

SEP 27 1982

INDIANA STATE BOARD OF HEALTH
ASSISTANT COMMISSIONER FOR
ENVIRONMENTAL HEALTH
CAUSE NO. N-53

RESPONDENT'S ANSWERS TO PETITIONER'S FIRST
SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS
AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Comes now the Respondent, the ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA, by counsel Linley E. Pearson, Attorney General of the State of Indiana, by Mathew S. Scherschel, Deputy Attorney General, and in response to Petitioner's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents, says:

A. THE TYPE OF WASTE INVOLVED:

1. Admit or deny that the staff of the Indiana Environmental Management Board (hereafter referred to as "Respondent" or "the State") has refused to grant Petitioner permission to continue accepting "hazardous wastes" as defined in 320 IAC 5-2-1 (1982 Cum. Supp.) (these wastes as so defined are hereafter referred to as "industrial wastes") at the Gary Development Landfill ("GDL").

1. Deny that Board staff refused to grant permission to continue accepting hazardous waste but admit that the Board has refused to grant such permission.

(a) Admit or deny that the term industrial wastes covers a much broader range of wastes than is covered by the definition and listing of "hazardous wastes" contained in 320 IAC 4-3 (1982 Cum. Supp.: all citations to 320 IAC used hereafter refer to the current, 1982 Cumulative Supplement, unless specifically noted otherwise).

(a). Admit.

(b) Admit or deny that the wastes covered by 320 IAC 4-3 (hereafter: "RCRA hazardous wastes") are the wastes covered by the federally-inspired hazardous wastes management program pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

(b) Admit.

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(c) Admit or deny that many industrial wastes do not possess the same pernicious (as used herein, the term "pernicious" means "injurious or destructive to human health or the environment") characteristics as RCRA hazardous wastes.

(c) Admit.

(d) Admit or deny that many industrial wastes do not possess the same degree of pernicious characteristics as RCRA hazardous wastes.

(d) Admit.

(e) Admit or deny that RCRA hazardous wastes are a subset of industrial wastes.

(e) Admit.

(f) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes are, generally speaking, less pernicious than RCRA hazardous wastes.

(f) Admit.

(g) Admit or deny that the category of industrial wastes which are not also classified as RCRA hazardous wastes do not, generally speaking, possess the same hazardous or pernicious characteristics as recrement, but rather, includes all industrial wastes which possess "inherent dangers."

(g) Admit

(h) If your response to any of the above requests for admissions is one of denial, explain in detail the reason for your denial including examples of the wastes which do not meet the above categorizations, and discuss the characteristics of each such waste.

(h) Explanation included in answer to Interrogatory 1.

(i) Produce all documents relating to your responses to the questions and requests for admissions contained in Interrogatory 1 and all subparts hereto.

(i) The answers in 1. are substantiated in 320 IAC 4 and

320 IAC 5.

B. THE STATE'S REASONS FOR DENYING GDL CONTINUED AUTHORITY TO ACCEPT

INDUSTRIAL WASTE:

2. In Mathew Scherschel's, attorney for Respondent, letter to John M. Kyle III dated August 3, 1982, Mr. Scherschel said that one of the reasons GDL had been denied permission to continue accepting industrial wastes was:

The geologic setting of Petitioner's site is marginal. Therefore, the site construction techniques are very important, and were to "make up for" that marginal geologic setting. The site construction by Petitioner has been poor, as shown by noncompliance with the approved construction plans. Because of the techniques used, there is no "back up" for existing geology.

(a) Discuss all reasons for classifying the GDL site as geologically "marginal."

2. (a) (1) The site consists of a pit in very fine-grained beach and dunal sand. The sand has a hydraulic conductivity of .02 cm/sec,

which is insufficient to retain the flow of contaminants beyond the site boundary. The sand offers little if any attenuation of leachate.

(2) The sand is a saturated unconfined aquifer with a high water table. Any movement of contaminant beyond the site is a hazard to groundwater resources. 320 IAC 5-5-6(c) prohibits filling into an aquifer. A barrier of undisturbed soil must be maintained between the refuse and the aquifer.

(3) The site is located adjacent to the Grand Calumet River. The movement of leachate beyond the pit is a hazard to the surface water resources.

(4) The site is located in a flood hazard area. An Indiana Department of Natural Resources (DNR) permit for flood plain alteration has never been acquired.

(5) Due to the fact that the site is in an aquifer, the operator has had to dewater the pit. The infiltrating groundwater quality is potentially poor and the operator has failed to provide sufficient testing of the collected groundwater before discharging it to the Grand Calumet.

(6) Sand has been used for cover material. Sand as cover material does not prohibit precipitation from entering the refuse and producing leachate.

(b) Admit or deny that numerous landfills exist in this same general geologic setting and that such landfills legally and illegally accept industrial wastes.

(b) Deny.

(c) List all such landfills and their addresses referred to in your response to subparagraph (b) above; list all industrial wastes which the State has allowed, pursuant to 320 IAC 5-5-14, to be disposed of at such landfills; categorize each waste listed as either industrial or RCRA hazardous waste (as defined above) or both; describe each waste's hazardous characteristics; and discuss the current State action to limit or eliminate disposal of such waste in said landfills.

(c) Not applicable.

(d) Isn't true that certain construction techniques or other measures can be undertaken to compensate techniques and measures and discuss in detail how these reasons would protect the environment and be incorporated at GDL.

(d) It is true. Such examples were proposed in the original GDL plans and in the amendment to the construction permit. It is very

difficult to say what other techniques might be available and applicable to the specific geology of the GDL site.

(e) Discuss in detail all specific examples supporting the State's allegation that Petitioner had not complied with approved construction plans.

(e) Non-compliance with 1973 Construction Plan.

- (1) External dewatering system not constructed around entire site.
- (2) Discharge of water to the Grand Calumet not monitored.
- (3) Flow meter on discharge to Grand Calumet not utilized.
- (4) Initial clay liner surrounding the entire site not constructed.
- (5) Leachate from site was not taken to a wastewater treatment plant.
- (6) A gas venting system has not been installed on finished areas.
- (7) Leachate collection system not constructed.

Non-compliance with 1980 Construction Plan Amendment

- (1) Failure to utilize impervious clay soil for daily cover.
- (2) Failure to construct clay berm by compacting 12-inch layers of clay to 90% Standard Proctor Density.
- (3) Failure to follow operational plan specifying fill sequence and progression.

(f) Discuss at length the specific actions, techniques, or construction measures which you contend would render GDL a suitable site to dispose of industrial wastes, or at least some types of industrial wastes.

(f) Staff does not contend that the site can be rendered suitable for industrial waste disposal.

(g) Do you contend that GDL is unsuitable to accept any waste classified as "industrial." Discuss your response in detail.

(g) Yes. The vital past construction necessary to protect the environment was not verified and the site cannot be judged as secure enough to accept industrial waste which would compound problems with any leachate movement away from the site.

(h) Produce all documents relating to your responses to Interrogatory 2 and all subparts thereto.

(h) Geologic evaluation and USGS quadrangle map are attached.

(Attachment A).

3. Mr. Scherschel's August 16th letter referred to in Interrogatory 2 above, gave the following additional reasons for denying GDL the ability to receive industrial wastes:

There have (sic: has) been an unacceptable daily operation on-site, thereby not providing a good site for secure disposal of the subject hazardous wastes. The unacceptable daily operations include the non-provision of sufficient daily cover, as well as the manner in which Petitioner has handled and compacted solid waste. The use of fly ashes cover is not acceptable due to the permeability (sic: permeability) of that material.

(a) Discuss in detail all specific examples, giving dates and times, of such alleged "unacceptable daily operation on-site."

3. (a) See inspection reports for the following dates; 3/15/78, 4/7/78, 5/9/78, 4/18/79, 8/24/79, 10/30/79, 9/19/80, 11/14/80, 1/8/81, 8/20/81.

(b) Discuss in detail the allegation that insufficient daily cover has been used, referring to the date and time that such insufficient cover allegedly occurred, refer to the specific inspection reports supporting such allegation, and discuss expected adverse environmental impacts arising from such alleged practices.

(b) See inspection reports for the following dates; 3/15/78, 4/7/78, 5/9/78, 4/18/79, 8/24/79, 10/30/79, 9/19/80, 11/14/80, 1/8/81, 8/20/81. The lack or inadequacy of daily, intermediate or final cover can cause the following problems:

NOTE: Under definitions of "contaminant," "air pollution," and "water pollution" under IC 13-7-1-2; the prohibited acts described under IC 13-7-4-1; and the authority to issue permits under IC 13-7-10; the Board is authorized to regulate acts concerning contaminants which are, or threaten to be, injurious to human health, plant or animal life, to property, or to enjoyment of life or property, or with contaminants which threaten nuisance, or which render waters harmful, detrimental, or injurious to public health, safety, or welfare. Wherever Respondent claims more specific effects other than just "environmental impacts," Respondent will so indicate by means of an asterisk.

(1) Infiltration of precipitation causing leachate which can move to the perimeter where the leachate collection system and side barrier were improperly constructed.

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Movement of leachate outside the site will degrade surface and ground waters.

(2) Allow bird population to feed on wastes, flock around the site and possibly interfere with aircraft at the nearby airport.* (nuisance)

(3) Allow vectors to feed on exposed refuse. *(public health)

(4) Allow underground fires to spread. *(public health & safety)

(5) Allow odors to permeate through the area. *(nuisance)

(c) Discuss in detail the allegation that Petitioner has improperly handled and compacted solid waste, refer to the date and time of such alleged improper handling and compaction, refer to specific inspection reports supporting this allegation, and discuss the adverse environmental impacts arising from such alleged practices.

(c) See inspection reports for the following dates; 3/15/78, 4/7/78, 8/24/79, 11/14/80, 1/8/81. Adverse impacts would be the same as above with the addition of the following:

(1) Create steep slopes endangering the safety of equipment operators.* (health and safety)

(2) Allow voids which later subside and create depressions capable of ponding water at the top of a finished surface. * (leachate generation & public health)

(d) Discuss in detail the allegation that Petitioner has utilized fly ash in lieu of other acceptable cover, refer to the date and time of such alleged practice, refer to the specific inspection reports supporting such allegation, and discuss the expected adverse environmental impacts arising from such alleged practices.

(d) See inspection report dated 8/20/81.

(1) Fly ash, as distinguished from the fly ash admixture, does not have as low a permeability as clay soil cover and will allow greater amounts of precipitation to enter the refuse and create leachate. * (surface and ground water contamination)

(2) Fly ash is generally not inert and allows degradation of precipitation causing leachate as the precipitation migrates through it. * (surface and ground water contamination)

(e) Has fly ash or shredder material ever been used in lieu of other cover, or has it rather been used in addition thereto? Discuss your response in detail.

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(e) Fly ash and shredder material have both been used in lieu of other cover.

(f) Has the State ever granted GDL, verbally or in writing, permission to use fly ash or shredder material as top surfacing for cover and not in lieu of cover? Discuss your answer in detail.

(f) The State has never granted permission for fly ash or shredder material to be used as top surfacing at Gary Development; however, the inspector has not objected to the use of fly ash for developing roads over filled areas.

(g) Defining "marker pile" as a compacted pile of refuse left overnight to serve as a guidepost for initiating the next day's dumping, does the State in fact permit this practice? If so, how large may such a marker pile be? Do any of the examples given of allegedly insufficient daily cover include, in whole or in part, uncovered marker piles? Discuss your response to this subpart in detail.

(g) No.

4. Discuss in detail any and all reasons not covered by the discussion in Interrogatories 2 and 3 above, leading to the State's refusal to grant GDL the continued ability to accept industrial wastes.

4. GLD has not complied with quarterly groundwater monitoring for conventional and industrial waste disposal in the past. The clay seal is not impervious as initially stated in the construction plans. No proof of side barrier compaction has ever been submitted. Gas vents were never installed as outlined in the plans. Routine monitoring of external dewatering was not done as outlined, nor was a flow meter established on the dewatering discharge. A National Pollution Discharge Elimination System (NPDES) permit has not been obtained for the discharge. Fly ash and foundry sand were not proven to be inert for use as cover.

5. Produce all documents discussing or relating to your responses to Interrogatories 2 through 5 above.

5. See attachment A and referenced inspection reports.

C. INSPECTIONS:

6. We have in our possession copies of inspection reports performed by Indiana State Board of Health inspectors of GDL for the following dates: 1/8/82; 10/20/81; 8/20/81; 7/10/81; 4/21/81; 1/8/81; 11/14/80; 9/19/80; 7/25/80; 6/19/80; 10/30/79; 4/18/79; 11/30/78; 8/17/78; 6/20/78; 5/9/78; 4/7/78; 3/15/78; 10/20/77; 8/8/77; 5/26/77; 3/29/77; 1/20/77; 10/5/76; 8/10/76; 7/14/76; 5/26/76; 5/11/76; 4/5/76; 2/26/76; 2/11/76; 1/22/76; 12/2/75; 10/9/75; 6/4/75; 4/1/75; 1/30/75; 12/17/74; 1/4/74; and 10/5/73.

(a) Are these the only inspections conducted by the State?

6. (a) No.

(b) If other inspections have been conducted by the State, provide the dates of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(b) 1/3/79 - George Oliver, 8/24/79 - George Oliver, 3/3/80 - George Oliver, 8/10/82 - George Oliver and Stu Miller, 12/28/77 - Bruce Palin See Attachment B.

(c) To your knowledge, has any one other than the State conducted inspections at GDL? If so, specify the date of such inspections, the name of the Inspector(s), and produce copies of any inspection reports made pursuant to those inspections.

(c) No.

7. Referring the State's January 8, 1982, inspection report:

(a) Admit or deny that on January 8, 1982, George Oliver and Stu Miller inspected GDL and found the site acceptable;

7. (a) Admit. (From here on, an indication on an inspection report that the site is acceptable refers only to the daily operations observed at the time of the inspection.)

(b) Admit or deny that daily cover operations, including spreading and compacting of such material, were not found unacceptable;

(b) Admit.

(c) State the adverse environmental impact(s), if any, which would result from the use of foundry sand as a cover material; and

(c) The adverse environmental impact would be the same as for fly ash, except foundry sand would be even more permeable.

(d) Admit or deny that no improper handling or disposal of hazardous waste was detected.

(d) Admit.

8. Referring to the State's October 20, 1981 inspection report:

(a) Admit or deny that on October 20, 1981, George Oliver and Bill Morgan inspected GDL and found the site acceptable;

8. (a) Admit.

(b) Admit or deny that George Oliver and Bill Morgan found:

(i) that the daily operation at GDL showed "much improvement;"

(b) (i) Admit.

(ii) that the refuse was compacted;

(ii) Admit.

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(iii) that the working face was in a small area; and

(iii) Admit.

(iv) that there were no violations of applicable state regulations noted. [Answer each subpart separately.]

(iv) Admit.

9. Referring to the State's inspection report of August 20, 1981:
- (a) Explain the significance of the notation that "The J & L Steel Manifest # 7302-12750 - Tar Decanter Sludge and # 7302-12685 - Central Waste Treatment Plant Sludge were received at the site on 8/19/81," in the absence of any further notation that either substance was improperly disposed of by GDL.

9. (a) The report establishes that the central waste treatment plant sludge was not disposed of properly. Since the manifest for the sludge indicated the sludge was received on 8/19/81, and the report indicates it was seen on site 8/20/81, then it is established that the waste did not receive daily cover.

(b) What methodology was used to determine that the "sludge observed" originated from the Central Waste Treatment Plant Sludge Manifest # 7302-12685 and was in fact received by GDL on August 19, 1981?

(b) Reading the manifest.

(c) At the time of this inspection, was GDL closed for business, or was it continuing to accept waste for that day?

(c) Continuing to accept waste.

(d) What methodology was used to correlate the size of the working face with the amount of refuse received by Gary Development to lead the inspectors to conclude that daily cover was not being applied?

(d) Professional knowledge and experience.

(e) How large was the large working face?

(e) Do not recall.

(f) What is the anticipated adverse environmental impact of employing fly ash for a cover material? Was fly ash used in lieu of, or in addition to, other acceptable cover material?

(f) See Reply to Interrogatory 3(d).

(g) Were the engineering drawings consulted at the time of the inspection and employed contemporaneously with the determination that the leachate collection system was not being constructed as per the drawings?

(g) No.

10. Regarding the statement in the State's August 20, 1981 report that "hazardous waste is not properly disposed of:"

(a) List the specific types of hazardous waste, and their hazardous properties, which were not properly disposed of.

10. (a) Central waste treatment plant sludge. It is a RCRA

hazardous waste under the F006 designation because of its potential to

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leach at least one of the contaminants listed in 40 CFR 261.24.

(b) What was the improper manner in which any such waste was being disposed of?

(b) See Reply to Interrogatory 9 (a).

(c) What quantity of such waste was being disposed of?

(c) Indicated on manifest.

(d) What as the source of any such waste which was improperly disposed of?

(d) J & L Steel.

(e) Were any such wastes subject to a letter issued by the State pursuant to 320 IAC 5-5-14 (hereafter: "Special Permission Letter")?

(e) Yes.

(f) Were any such wastes similar in nature to other wastes being taken to GDL pursuant to a Special Permission Letter?

(f) The Board does not know what wastes are accepted under a special permission letter.

(g) Explain in reasonable detail the adverse environmental impacts associated with the alleged improper disposal of such wastes.

(g) The leachate from the hazardous waste or the waste itself may migrate into adjacent ground or surface waters through improperly sealed side barriers. * (ground and surface water contamination) Without proper cover, the waste is exposed to bird and vermin populations and possible human contact. * (threat to public health)

11. Admit or deny that on July 10, 1981, George Oliver and Mary Roe inspected GDL and found the site's operation acceptable.

11. Deny. A complete inspection was not conducted.

12. Referring to the July 10, 1981 inspection report:

(a) What environmental concerns were raised by GDL's acceptance of shredder material?

12. (a) As long as it is disposed of in compliance with the operational standards outlined in 320 IAC 5, there are no environmental concerns.

(b) What adverse environmental impacts were anticipated by GDL's acceptance of such shredder material?

(b) See answer to Interrogatory 12 (a).

13. Admit or deny that on April 21, 1981, George Oliver inspected GDL and found (a) site to be acceptable; (b) that the refuse was worked well; and (c) cover was applied? [Answer each subpart separately.]

13. (a) Admit.

(b) Admit.

(c) Admit.

14. Regarding the State's April 21, 1981 inspection report, what is the significance of the notation that Union Carbide coal ash/slag was coming to the landfill?

14. It confirmed that a material which had been approved for disposal at the site was being disposed of at the site.

15. Referring to the State's January 8, 1981 inspection report:

(a) What is the anticipated adverse environmental impact of the end of the working face being a cliff?

15. (a) The cliff indicates the refuse making up the face has not been compacted in shallow layers. See answer to Interrogatory B 3(c).

(b) Are there any weather-related factors which could have resulted in the operator being unable to maintain a 3:1 slope?

(b) No.

16. Referring to the State's November 14, 1980 inspection report:

(a) What specific areas were observed which did not have daily cover?

16. (a) Cannot recall.

(b) Which two edges approximately four feet high needed to be worked onto a 3:1 slope?

(b) Cannot recall.

(c) What is the anticipated adverse environmental impact of the Gary Landfill accepting aluminum dross?

(c) Leachate tests performed on aluminum dross showed such waste would increase several parameters of leachate generated, and compound the degradation of surface and ground water.

(d) Is aluminum dross an "industrial waste" or a "RCRA hazardous waste," or both? Please give citations of authority as to the categorization of aluminum dross, and the regulation supporting this classification.

(d) Industrial waste. 320 IAC 5.

(e) What was the source and quantity of the water and leachate which were observed seeping into the pit along the west boundary?

(e) Unknown.

17. Referring to the State's September 19, 1980 inspection, admit or deny that George Oliver inspected GDL and found that the refuse was "compacted well."

17. Admit.

18. Referring to the State's September 19, 1980 inspection, what criteria was employed by the Inspector to determine that daily cover had not been applied for two or three days?

18. Professional knowledge and experience.

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19. Admit or deny that on July 25, 1980, George Oliver inspected GDL and found the site was: (a) acceptable and the operation satisfactory; and (b) that the refuse was compacted well and a cover applied. [Answer each subpart separately.]

19. (a) Admit.

(b) Admit.

20. Admit or deny that on June 19, 1980, George Oliver inspected GDL and found:

(a) the site acceptable;

20. (a) Admit.

(b) the refuse compacted well; and

(b) Admit.

(c) daily cover applied. [Answer each subpart separately.]

(c) Admit.

21. Referring to the State's June 19, 1980 inspection:

(a) What quantity of blowing paper was observed and did that quantity constitute a threat to the environment and/or the health of the citizens of Indiana? If so, discuss your response in detail.

21. (a) Quantity unknown. Control of blowing litter is a requirement of Regulation 320 IAC 5.

(b) What were the wind conditions on that particular day?

(b) Do not recall.

22. Referring to the State's inspection report of October 30, 1979:

(a) What was the quantity of "hazardous waste" which was improperly disposed of, and for each waste, was the waste an industrial waste, a RCRA hazardous waste, or both?

22. (a) Quantity unknown. Industrial waste; RCRA was not in effect at the time.

(b) Was this waste subject to, or similar in nature to waste subject to, a Special Permission Letter issued by Indiana?

(b) Yes.

(c) What was the nature and amount of exposed refuse observed in the northeastern portion of the property?

(c) Refuse typically disposed of at the site. Approximately one acre in surface area, depth is unknown.

(d) What is the quantity and type of oil which was being placed in the trench? Describe the anticipated adverse environmental impact of this practice?

(d) Quantity and type unknown. Exposing refuse and destroying daily cover. [See answer to Interrogatory 3 (b)]. Practice is also a violation of the approval letter for the waste which states that waste must be mixed with the daily refuse and receive daily cover.

23. Referring to the State's April 18, 1979 inspection report:
(a) Which sections of the clay wall were not completed?
23. (a) West wall, south wall and north wall were not completed.
(b) How close were these missing sections to the working areas of the landfill?
(b) Cannot recall.
(c) Upon what date was the wall to be completed as per the State-approved plan?
(c) The completion date for the wall is not a set date. The construction of the wall is to be extended up ahead of the filling and be completed prior to the site reaching its final elevations.
24. Admit or deny that on November 30, 1978, Bruce Palin and Jim Hunt inspected GDL and found the site acceptable.
24. Deny.
25. Admit or deny that on August 17, 1978, Bruce Palin inspected GDL and found the site acceptable.
25. Deny.
26. Admit or deny that on June 20, 1978, Bruce Palin inspected GDL and found the site acceptable.
26. Deny.
27. Referring to the State's June 20, 1978 inspection report:
(a) Doesn't the notation that the "U.S. Reduction dust was causing a tremendous dust problem" and that there was a "need to contact the industry about this" indicate that the dust problem was caused by U.S. Reduction and not Gary Development? If not, discuss your response in detail.
27. (a) No, Gary Development has the responsibility to maintain the landfill in a nuisance free condition through its operational procedures. If particular wastes are creating a problem at a site, the operator may either correct the problem or refuse to accept the waste.
(b) What were the results of the water quality tests which were requested to be sent to the Board?
(b) No request was made to send samples to the Board.
28. Referring to the State's May 9, 1978 inspection report:
(a) What are the anticipated adverse environmental impacts of disposing of these particular oily wastes at GDL?
28. (a) The problem with the waste at the time of the inspection was how it was handled. Trenches were dug into already filled areas exposing refuse and creating the problems outlined in the answer to

Interrogatory 3(b). The situation also presented a hazard to any vehicular or pedestrian traffic which could inadvertently fall into the pit.

(b) What specific inadequacy was found with the daily cover?

(b) The daily cover had been removed to dig pits in the refuse for disposing of the oily waste.

29. Referring to the State's April 7, 1978 inspection report:

(a) Were any tests conducted upon the samples taken of the discharge?

29. (a) Yes.

(b) If so, produce the results of those tests.

(b) See Attachment C.

30. Referring to the State's April 7, 1978 report, what methodology was employed by the inspectors to ascertain that the alleged insufficiently covered materials were materials dumped at the site on a date previous to the date of the inspection?

30. Professional knowledge and experience.

31. Referring to the State's March 15, 1978 inspection, could any of the ponded water on the site have been due to environmental factors, such as a spring melt or heavy rains, which are beyond the control of the operator? Discuss your answer in detail.

31. Yes, the ponded water could have been due to environmental factors; but, no, it is not beyond the control of the operator. The landfill should be graded on both filled and unfilled areas to promote runoff of surface water and to prevent ponding.

32. Other than the State's March 15, 1978 report, have any incidents of scavenging been detected by Inspectors at the site?

32. Yes, 8/24/79.

33. Admit or deny that prior to March 15, 1978, the operation of GDL was never deemed unacceptable by the State.

33. Deny.

34. Admit or deny that on October 15, 1976; August 10, 1976; July 14, 1976; April 5, 1976; December 2, 1975; June 4, 1975; April 1, 1975; and January 30, 1975, the overall operation of the site was rated "good" by the State.

34. Deny for October 15, 1976 as we have no record of an inspection on that date. Admit to good ratings on the rest of the dates.

35. Admit or deny that on December 17, 1974, the overall operation of GDL was rated "excellent" by the State.

35. Admit.

36. Does the State provide its Inspectors of solid/hazardous waste facilities with a training manual or any other similar document, containing guidelines, requirements, procedures, or recommendations

to be used by Inspectors in the course of their inspections? If so, produce said manual or documents, and all documents relating to said manual or documents.

36. No.

37. Does the State provide, or if not, send its potential Inspectors to, a training program of any kind, formal or informal, which individuals must attend and/or pass prior to becoming official Inspectors of the State of Indiana?

37. No, all training is on the job training and there is no test which will pass or fail an inspector.

(a) If so, discuss in detail the nature of such programs; produce all documents relating thereto; and provide proof that the Inspectors whose names appear in the inspection reports referred to in Interrogatory 6 above successfully completed such a program.

(a) Not applicable.

(b) What are the education and/or experience requirements demanded by the Board for Landfill Inspectors.

(b) The minimum requirements are as follows:

Sanitarian V - General - Three (3) years full time paid professional experience in public or environmental health. Accredited college training may substitute for the required experience with a maximum substitution of three (3) years. (15 semester hours in MATHEMATICS, PHYSICS, CHEMISTRY, BIOLOGY, NATURAL RESOURCES, PUBLIC HEALTH or ENVIRONMENTAL HEALTH SCIENCES required.)

Sanitary Engineer V - Graduation from an accredited four-year college. (Major in ENGINEERING required) License to practice engineering in the State of Indiana may substitute for the above requirement.

(c) For those Inspectors which have participated in inspections of GDL, list

(i) the educational background of each Inspector including the degree conferred, the school from which the degree was conferred, the date of conferral;

(c) (i) Bruce H. Palin, Bachelor of Science in Electrical Engineering, Rose - Hulman Institute of Technology, May 1976.

George E. Oliver, Bachelor of Science in Environmental Health, Indiana State University, March 1973.

Stuart Miller, Bachelor of Science in Biology, Ball State University, August 1975.

(ii) the landfill-related work experience of each Inspector including, the length and type of experience each has had

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- (1) inspecting landfills for the State of Indiana;
- (2) inspecting landfills for private organizations;
- (3) managing or operating landfills;
- (4) working at landfills.

(11) (1) Bruce Palin - 4 years inspecting landfills and 2 years supervising the Engineering Review Section; George Oliver - 2 years experience inspecting sanitary landfill, Allegheny Co. Health Dept. Pittsburgh, PA., 6 1/2 years, one year experience, supervisor of industrial waste approval program; and Stuart Miller, 2 1/2 years as inspector for the state.

- (2) None for neither inspector.
- (3) None for neither inspector.
- (4) None for neither inspector.

38. Is it a generally accepted practice by the State and/or its Inspectors not to place "cover" on a landfill until the end of the day when the landfill stops accepting wastes for that day?

38. Yes. Daily cover is to be applied at the end of the operating day under 320 IAC 5-5-13(b). The operating day is designated by the Sanitary Landfill Operator in the approved construction plan.

(a) If the answer to the above question is yes, how can an Inspector determine at a period of time when a landfill is continuing to accept wastes, whether cover for that day is or will be adequately applied to the landfill? Discuss this answer in detail.

(a) The rule presumes that an operator has management control over the operation of the facility, and that he has scheduled the operating day to include the hours for acceptance of waste, and an allowance of time to apply cover.

(b) If the answer to the main question contained in number 38 above is no:

(i) at what point in time does the State require that cover be applied?

(ii) cite any and all regulations, and refer to any and all documents establishing, relating to, and discussing such a requirement.

(b) Not Applicable.

(c) Produce any and all documents relating to and/or discussing the time when cover is to be applied under Indiana law.

(c) References may be found in 320 IAC 5 and the site construction plan.

D. SPECIAL PERMISSION LETTERS:

39. We have in our possession the following "Special Permission Letters" (as used herein, the term "Special Permission Letters" refers to those letters issued by the State granting authority to dispose of hazardous or special wastes pursuant to 320 IAC 5-5-14) issued by the State to GDL:

Date	Waste Type	Waste Quantity
7/14/81	Fly Ash	80,000 cubic yards for calendar year 1981
1/9/81	Asbestos	50 cubic yards (one-time-only basis)
12/17/80	Pipe Insulating Asbestos Waste	300 cubic yards (one-time-only basis)
12/9/80	Metal Shavings	25 cubic yards per year
10/30/80	Asbestos Contaminated Material	700 cubic yards (one-time-only basis)
8/25/80	Asbestos	100 cubic yards (one-time-only basis)
5/14/80	Asbestos	40 cubic yards per week for four weeks; 20 cubic yards every other week thereafter
5/13/80	Fly Ash	15,000 cubic yards
11/27/79	Aluminum Dross (Milling Dust and Slag)	300 tons per day until June 15, 1980
3/20/79	Furnace Brick, Pallets	Unspecified
4/28/78	Water and Vegetable Oil	4,000 gallons (one-time-only basis)
11/18/77	Herbicide	120 cubic yards (one-time-only basis)
9/6/77	Oily Waste From 6-stand Oil Recovery Unit	1,200 gallons per day
7/22/77	Filter Cake	1,500 pounds per week
	Kiln Scrubber Mud	3,000 pounds per week
6/3/77	API Separator Bottoms	200 cubic yards per year
6/1/77	Lime Sludge	80,000 gallons per month (not more than 4,000 gallons per day)
5/17/77	Asbestos Paper	105 cubic yards per week
5/12/77	Filter Cake	1,500 pounds per week
	Scrubber Mud	3,000 pounds per week (Temporary Approval)
4/25/77	Activated Biological Sludge	Unspecified
3/14/77	Calcium Sulfate	1.5 tons per day
3/14/77	Lime Waste	80,000 gallons per month
3/4/77	Youngstown Oil Sludge	Unspecified
10/7/76	Gypsum Wastes (ph 7.9)	Quantity Unspecified
10/4/76	Calcium Carbonate	30 cubic yards per day
4/12/76	Paint Sludges	25 cubic yards per day
2/20/76	Corn Starch and Carbon Filters	Unspecified
1/30/76	Lime Slurry	1,500 to 5,000 gallons per week
6/18/75	Neutralized Sludges	Temporary Approval
2/24/75	Dipolene	4 to 5 truckloads per week for 6 months

(a) Are the Special Permission Letters outlined above the only such letters issued by the State granting permission to any person or company to dispose of hazardous or special wastes at GDL? If not, list all other such letters and their date; specify the type of waste involved; identify whether such waste is an industrial waste, a RCRA hazardous waste, or both; and produce copies of such letters and all documents relating thereto.

39. (a) No. 3/19/77 Terminal Treatment Sludge Unspecified
 6/16/75 Aluminum Oxide Sludge 40,000 lb/day
 Both of these wastes are industrial wastes and at the time

of approval RCRA was not in effect. See Attachment D for copies of the above-referenced letters.

(b) Has the State ever orally granted special permission to dispose of special or hazardous waste at GDL and not followed up on such oral approval with a letter? If so, state the date of such approval; the generator and type of waste involved; and the amount and duration of the waste permitted to be disposed of.

(b) No knowledge of this occurring.

(c) Admit or deny that the above chart accurately sets forth the Special Permission Letters granted to GDL, and the type, amount, and duration of the disposal of such wastes. If you deny this statement, specify the inaccuracies, and set forth, in detail, a correct replacement chart.

(c) Deny. See answer to Interrogatory 39 (a).

(d) Admit or deny that the State could not and would not issue the above Special Permission Letters unless it determined that disposal of such wastes at GDL would not pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(d) The state admits to exercising such caution and adds that it exercises the same regard for health and environment when it recalls permission letters upon subsequent discovery that disposal of such wastes is not being done in accordance with established standards and facility design.

(e) If Respondent denies subpart (d) above, then state in detail under what conditions the Board would issue a Special Permission Letter knowing that disposal pursuant to said letter would pose an unreasonable risk of harm to the environment or health of the citizens of Indiana.

(e) Not Applicable.

(f) Discuss in detail the considerations the Board addresses in reviewing a Special Permission Letter request and the factors which lead the Board to grant or deny such requests.

(f) In evaluating a request for a Special Permission Letter, the following criteria is used:

(A) With regard to the facility:

- (1) Is the facility a sanitary landfill (SLF);
- (2) Is the SLF on a phase-out or closure schedule;
- (3) Are there permit conditions on the SLF permit that would restrict or limit the disposal of special or hazardous wastes;
- (4) Does the facility have documented geologic limitations;
- (5) Does the daily operational history of the facility show a record of consistent compliance with the regulations;
- (6) Has leachate been identified on-site or flowing off-site;

(7) Are there any pending legal actions against the facility which would prohibit special waste approval; and

(8) The volume of solid waste at the facility.

(B) The waste material is evaluated to determine:

(1) If it is a RCRA hazardous waste or whether it exhibits any characteristics of a RCRA hazardous waste;

(2) The per cent of solids in the waste (if a liquid), or the water content of the waste;

(3) The industrial process from which the waste is generated to be aware of the chemical constituents involved;

(4) Whether the waste contains any chemicals or constituents which would contaminate ground or surface water;

(5) Whether the waste, by virtue of its volume, odor, physical state or other characteristic, would cause or threaten to cause adverse operational, safety or environmental effects at the SLF.

(g) Produce any and all documents relating to your responses to Interrogatory 39.

(g) None.

40. Regarding each entry contained in the chart in Interrogatory 39 above, for each waste and entry listed, state whether each waste is an industrial waste, a RCRA hazardous waste, or both. Discuss in detail the categorization of each waste, the properties that render each waste "hazardous," and produce all documents relating to this Interrogatory.

40. All entries are industrial waste. Any approval prior to November 19, 1980 was not subject to RCRA so the determination as to whether a waste was a RCRA hazardous waste was not applicable. The burden of determining whether a waste is RCRA hazardous, or not, is on the generator.

41. Admit or deny that a Special Permission Letter which grants the right to dispose of a particular waste at a given rate per unit of time (e.g. 40 cubic yards per week) remains in effect until the permission expires of its own terms or until the State takes further action regarding said permission. If Respondent denies this statement, then discuss in detail the ways such a Special Permission Letter becomes ineffective and invalid. Produce documents relating to this Interrogatory.

41. Admit.

42. For each waste set forth in the chart in Interrogatory 39 above, discuss in detail the reasons why GDL cannot and should not continue accepting such wastes; the potential risk to the environment and health of the citizens of Indiana associated with continued acceptance of each such waste in like quantities at GDL; why disposal of such waste now is denied while it was previously permitted; and produce all documents relating to this Interrogatory.

42. Fly ash, aluminum dross, water and vegetable oil, herbicide, oil wastes, filter cake/kiln scrubber mud, API separator bottoms, lime sludge, filter cake scrubber mud, activated biological sludge, calcium sulfate, lime waste, Youngstown oil sludge, gypsum wastes, calcium carbonate, paint sludges, corn starch and carbon filters, lime slurry, neutralized sludges, and dripolene are not acceptable at GDL because of their potential for adding free liquids to the landfill, generation of leachate and other concerns of ground and water contamination detailed in the reply to Interrogatory 3(d), and because the facility does not meet the facility criteria stated in the reply to Interrogatory 39(f).

Calcium carbonate, although inert, can add free liquids to the facility if in sludge form, and if dry, is an air pollution or nuisance problem if improperly disposed of.

Asbestos, pipe insulating asbestos waste, asbestos contaminated material and asbestos paper, are a significant health hazard. Special safeguards must be taken to landfill asbestos wastes so they cannot become airborne. Because of GDL's inconsistent operating record and other considerations under the policy stated in the reply to Interrogatory 39(f), the Board does not think it is prudent to further allow the facility to accept such wastes.

Furnace brick, pallets, and metal shavings, are not normally considered special or hazardous wastes under 320 IAC 5 and would be acceptable at GDL unless they are associated with other wastes which have environmental, health or nuisance impacts. However, in this case, the metal shavings were associated with over 90% liquids which rendered it unsuitable for disposal at GDL.

The reason why wastes previously approved are no longer acceptable now, is because the Board's policy regarding acceptance of industrial waste has become more stringent.

43. Have any state inspections of GDL revealed improper disposal practices relating to the disposal of each waste listed in the chart in Interrogatory 35 above? If so, discuss in detail the alleged improper practices, the dates on which these improper practices were observed, the potential environmental problems associated with said practices, and produce all documents relating to this Interrogatory.

43. Yes. See inspection reports dated 3/15/78, 5/9/78, 11/30/78, 10/30/79, 11/14/80, 8/20/81, with reference to answers to Interrogatories

3(b), 3(c) and 3(d) regarding environmental, health, safety, and nuisance concerns.

44. GDL received permission to accept the following listed wastes:

Waste Type	Permission Letter Date	Amount Allowed
API Separator Bottoms	6/3/77	200 cubic yards
Paint Sludges	4/12/76	25 cubic yards
Solid Corn Starch	2/20/76	Unspecified
Carbon Filters from Corn Syrup Filtering Process	2/20/76	Unspecified
Lime Sludges	6/1/77	80,000 gallons per month
Lime Waste	3/14/77	80,000 gallons per month
Calcium Carbonate	10/4/76	30 cubic yards per day
Lime Sludge	1/30/76	1/500 to 5,000 gallons per week
Activated Biological Sludge	4/25/77	Unspecified
Calcium Sulfate	3/14/77	1.5 tons per day
Gypsum Wastes	10/7/76	Unspecified

For each of the above-mentioned wastes, answer the following questions:

(a) Admit or deny that permission was received by GDL to receive this waste.

44. (a) Admit.

(b) Is each waste listed an industrial waste, a RCRA hazardous waste, or both? Cite the authority for, and the regulations supporting, this categorization.

(b) Each of the wastes listed in Item 39 is, under the terms of Petitioner's Interrogatories, an industrial waste, the disposal of which has been approved on a case-by-case basis under 320 IAC 5-5-14. Under the RCRA rule, 320 IAC 4-3-1 (40 CFR 261.3), any of those wastes could be RCRA hazardous wastes if they:

(1) exhibited a characteristic of hazardous waste under

40 CFR 261.21 through and including 40 CFR 261.24; or

(2) were, or were mixed with, a waste listed under 40 CFR 261.31 through and including 40 CFR 261.33.

Since those rules were promulgated by EPA on May 19, 1980, after the dates of the permissions, there was no opportunity to ascertain at the time whether those wastes were RCRA wastes.

(c) Admit or deny that the above approvals to accept each waste listed were given on a continuing basis? If you deny this statement, discuss your response in detail.

(c) Deny. Lime waste approved on 3/14/77 was a temporary approval and was replaced by the lime sludge approval dated 6/1/77. The

list contains inaccuracies concerning periods of time, i.e., "API

Separator Bottoms 6/3/77 200 cubic yards/" year.

(d) For each waste identified above, discuss in detail the anticipated adverse environmental impacts of continued disposal of these materials at GDL.

(d) The adverse environmental impacts would be as outlined in answer to Interrogatory 10 (g).

(e) In the past, have inspections revealed any improper dumping practices relating to the disposal of these wastes identified above? If so, discuss in detail the specific instances and problems, give the dates of the inspections, and produce all documents relating thereto.

(e) No, but there are no reports that indicate an inspector has witnessed the disposal of those materials at the site.

(f) Discuss in detail the State's reasons for denying approval to Gary Landfill to accept each waste listed above in the future?

(f) As outlined in the answer to Interrogatory 39(f), the determination of whether special wastes may be deposited at a particular facility is based on a two-pronged test: (1) whether the facility is in a good geological setting and whether it has a good operational history; and (2) the characteristics of the waste. Because of the poor geological setting at GDL coupled with inadequate construction of the facility and the low percentage of acceptable inspections during the past two years, GDL is categorically an unacceptable facility for industrial (special or hazardous under 320 IAC 5) wastes including all the wastes specified in this Interrogatory.

E. MISCELLANEOUS:

45. What specific corrective actions do you contend are necessary to place the landfill in compliance with the applicable state laws and regulations and to enable GDL to accept hazardous and/or industrial wastes?

45. There are no corrective actions which could be applied to GDL to enable that facility to accept hazardous and/or industrial wastes.

46. Identify each person the State plans to call as a witness at the hearing of this matter, each person's address and telephone number (business or personal), and state in reasonable detail the anticipated testimony of each.

46. George Oliver
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0213

Inspection of site, review of construction plans, approvals for special waste.

Bruce Palin
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0203

Inspection of site, review of construction plans.

Karyl Schmidt
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206
317/633-0197

Geology of site, review of construction plans, and monitoring wells.

Stuart Miller
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1330 West Michigan Street
Indianapolis, IN 46206
317/633-0742

Inspection of site

Steve Wakefield
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317/633-0815

Previous Hazardous Waste Representative

Ted Warner
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1330 West Michigan Street
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317/633-8525

Current Hazardous Waste Representative

Joseph L. Tite
815 Franklin Square
P. O. Box 366
Michigan City, IN 46360
219/872-3522

Construction plans and techniques

47. Produce all inspection reports of, and Special Permission Letters granted relating to, the following landfills:

- (a) the Wheeler Landfill;
- (b) the City of Gary Landfill;
- (c) the City of Munster Landfill; and
- (d) the J&D Landfill.

47. These documents are on file in the Division of Land Pollution Control offices and are open to the public for inspection and photocopying.

48. If any of the landfills listed in Interrogatory 47 above may lawfully accept industrial wastes, discuss in detail the reasons therefor, and the specific reasons for treating any of these landfills differently from GDL.

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48. Board actions regarding the facilities in Interrogatory 47 are documented in the files. The basis of Board actions authorizing disposal of industrial (special or hazardous under 320 IAC 5) wastes at those facilities would be predicated on the policy stated in the reply to Interrogatory 39(f).

Respectfully submitted,

Linley E. Pearson,
Attorney General
State of Indiana

By: Mathew S. Scherschel
Mathew S. Scherschel,
Deputy Attorney General


1987

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, "Respondent's Answers to Petitioner's First Set of Interrogatories, Requests for Admissions and Requests for the Production of Documents," has been duly served upon all counsel of record listed below, by United States Mail, First Class, postage prepaid, this 27th day of September, 1982.

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